

**TWELFTH JUDICIAL DISTRICT COURT
COUNTY OF LINCOLN
STATE OF NEW MEXICO**

BELLEVIEW VALLEY LAND CO, a New Mexico
corporation, and **John Williams** and **ELLEN B.**
WILLIAMS, husband and wife,

Plaintiffs,

vs.

THE ESTATE OF FRED VAN WINKLE, deceased,

Defendant.

No. CV-2015-00065

ORDER ON PLAINTIFF'S MOTION TO FILE SECOND
AMENDED COMPLAINT

EXHIBIT "25"

CAME ON to be heard the *Plaintiffs' Motion to File a Second Amended Complaint for Judgment on Debt & Money Due on Promissory Note, to Foreclose Real Estate Mortgage and to Foreclose Judgment Lien* (the "Motion") filed by Bellevue Valley Land Co. ("BVL"), John Williams and Ellen B. Williams ("Plaintiffs"). The Defendant, Estate of Fred Van Winkle, was represented by counsel. After considering all appropriate matters, the Court finds the Motion should be and is hereby GRANTED. Subsequent to the hearing of the Motion, Plaintiffs withdrew their proposed Second Amended Complaint, and Plaintiff's counsel submitted to Defendant's counsel, Kyle H. Moberly, an alternative Second Amended Complaint for his review to assure compliance with the bankruptcy court orders. Defendant's counsel consented to Plaintiff's filing of the revised Second Amended Complaint.

ACCORDINGLY, IT IS ORDERED.

Plaintiffs may file the form of Second Amended Complaint attached to Ken Dugan's e-mail to Kyle Moberly dated March 12, 2019.


Honorable Judge James Waylon Counts

Approved as to form:



W.T. Martin, Jr., counsel for Plaintiffs

/s/ 3/28/19 E-mail attached
Kyle H. Moberly, counsel for Defendant

Thursday, March 28, 2019 12:17 PM

Subject: RE: Williams Lincoln County Suit
Date: Wednesday, March 27, 2019 4:34 PM
From: Kyle Moberly <kyle@mobelaw.com>
To: Ken Dugan <kdugan@lawmdm.com>
Priority: Highest

Ken,

I apologize for not responding sooner. I had a concern about the wording of the part of the complaint concerning the Stipulated Order that I asked Trey Arvizu to advise me about as soon as I received your revised draft of the complaint on March 12th. Unfortunately, it took me until today to get a response from Trey. He resolved my concern. Therefore, on behalf of my client, I consent to you filing the amended complaint.

I assume that it goes without saying, but I will say it anyway, that my client's consent to the filing of the amended complaint does not mean that she does not dispute some of the allegations made in it, which will address in her answer.

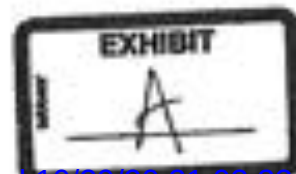
Sincerely,

Kyle H. Moberly
Law Office of Kyle H. Moberly, P.C.
2460 S. Locust Street, Suite E
Las Cruces, New Mexico 88001
(575) 541-1278

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail or by calling (575) 541-1278, so that our address record can be corrected. Thank you.

—Original Message—

From: Ken Dugan <kdugan@lawmdm.com>
Sent: Wednesday, March 27, 2019 4:13 PM
To: Kyle Moberly <kyle@mobelaw.com>
Subject: Re: Williams Lincoln County Suit



Page 1 of 7

Would you please show me the professional courtesy of responding to my e-mail request below. I also called today and left a message.

Ken

On 3/26/19 2:02 PM, "Ken Dugan" <kdugan@lawmdm.com <mailto:kdugan@lawmdm.com> > wrote:

> Would you please respond....

>

>

> On 3/21/19 9:56 AM, "Ken Dugan" <kdugan@lawmdm.com <mailto:kdugan@lawmdm.com> > wrote:

>

>> Would you please advise per the below. I sent you the red-line
>> version last week.

>>

>> Ken

>>

>>

>> On 3/12/19 12:03 PM, "Ken Dugan" <kdugan@lawmdm.com
<mailto:kdugan@lawmdm.com> > wrote:

>>

>>> See attached.

>>>

>>> Ken

>>>

>>>

>>> On 3/12/19 10:43 AM, "Kyle Moberly" <kyle@moberlaw.com <mailto:kyle@moberlaw.com> > wrote:

>>>

>>>> Ken,

>>>>

>>>> Please send me a redlined comparison of the revised draft with the
>>>> draft that was attached to the motion.

>>>>

>>>> Sincerely,

>>>>

>>>> Kyle H. Moberly
>>>> Law Office of Kyle H. Moberly, P.C.
>>>> 2460 S. Locust Street, Suite E
>>>> Las Cruces, New Mexico 88001
>>>> (575) 541-1278

>>>>

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>>>> it from your system without copying it, and notify the sender by
>>>> reply e-mail or by calling
>>>> (575)
>>>> 541-1278, so that our address record can be corrected. Thank you.

>>>>

>>>> -----Original Message-----

>>>> From: Ken Dugan <kdugan@lawmdm.com <mailto:kdugan@lawmdm.com> >
>>>> Sent: Tuesday, March 12, 2019 12:40 PM
>>>> To: Kyle Moberly <kyle@mobelaw.com <mailto:kyle@mobelaw.com> >
>>>> Subject: Re: Williams Lincoln County Suit

>>>>

>>>> Attached is a proposed draft Second Amended Complaint. I want to be very
>>>> careful to not violate the bankruptcy orders and rules. I have
>>>> tried my best to do that, with an overarching CAVEAT that governs
>>>> everything. I also deleted the claim for rent.

>>>>

>>>> As we discussed before the judge yesterday, you indicated that we
>>>> could probably stipulate to Plaintiffs filing a redacted form of the Second
>>>> Amended Complaint. Accordingly, please review this attached pleading, and
>>>> advise if I have your authority to file it.

>>>>

>>>> Thank you.

>>>>

>>>> Ken

>>>>

>>>>

>>>> On 3/12/19 10:00 AM, "Ken Dugan" <kdugan@lawmdm.com
<mailto:kdugan@lawmdm.com> > wrote:

>>>>

>>>>> As stated during the hearing yesterday, I will be reviewing the
>>>>> second amended complaint and revising and expressly conditioning
>>>>> it so as not to violate the Stipulated Order. I should have a
>>>>> proposed Draft to you today or tomorrow.

>>>>>

>>>>>

>>>>> Kenneth D. Dugan

>>>>>

>>>>> Martin, Dugan & Martin

>>>>> 509 W. Pierce St.

>>>>> P.O. Box 2168

>>>>> Carlsbad, NM 88221-2168

>>>>> (575) 887-3528

>>>>> (575) 887-2136 (fax)

>>>>>

>>>>>

>>>>> This email transmission is covered by the Electronic
>>>>> Communications Privacy Act, 18 U.S.C. sec. 2510-2521 and is
>>>>> legally privileged, confidential and protected from disclosure. If
>>>>> you are not the intended recipient, any dissemination,
>>>>> distribution, or copying is strictly prohibited. If you think you
>>>>> have received this e-mail message in error, please e-mail the
>>>>> sender at kdugan@lawmdm.com <mailto:kdugan@lawmdm.com> and destroy the
original e-mail transmission. Thank you.

>>>>>

>>>>>

>>>>> Kenneth D. Dugan

>>>>>

>>>>> Martin, Dugan & Martin

>>>>> 509 W. Pierce St.

>>>>> P.O. Box 2168

>>>>> Carlsbad, NM 88221-2168

>>>>> (575) 887-3528

>>>>> (575) 887-2136 (fax)

>>>>>

CERTIFIED a true copy of page(s) 4
of the original filed in the office of the Clerk,
United States Bankruptcy Court
Renee Bach
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FRED DALE VAN WINKLE
Debtor(s).

TAMMY SPRAGUE, as PR for the estate
Of Fred Dale Van Winkle
Plaintiff(s).

v.

Adv. Pro. No. 15-01047

JOHN WILLIAMS, ELLEN B.
WILLIAMS, and BELLEVIEW
VALLEY LAND CO., INC.,
Defendant(s).

TRANSCRIPT OF JUDGMENT

Nature of Action: Willful
Violation of the Automatic Stay

Judgment Creditor(s)
TAMMY SPRAGUE

Judgment Debtor(s)
JOHN WILLIAMS, ELLEN B.
WILLIAMS, and BELLEVIEW
VALLEY LAND CO., INC.

Judgment Amount:

Damages	<u>\$ 50,000.00</u>
Costs	<u>\$</u>
Total	<u>\$ 50,000.00</u>
Rate of Interest	<u>Federal Judgment Rate</u>

Date of Judgment: June 23, 2017

Date of Docketing Judgment: June 23, 2017

Issuance and Return of Executions, If Any: None

EXHIBIT "26"

NM LF 5003-5

LINCOLN COUNTY-NM
RECORD & RETURN CLERK
201704999
Book 0007 Page 4909
1 of 4
09-05-2017 00:04:49 AM



Attorney for Creditor: R. "Trey" Arvizu
PO Box 1479
Las Cruces, NM 88004
(575) 527-8600
Fax: (575) 527-1199

Does the docket indicate the judgment has been satisfied in full or in part? NO.
If yes, indicate the amount paid: _____.

I, Patty Stephens, a deputy clerk of the United States Bankruptcy Court for the District of New Mexico, do hereby certify that the foregoing is a true transcript of the docket of a judgment of this court, now of record in the Office of the Clerk.

Witness my hand and the seal of this court, this 28th day of July 2017.

CLERK OF COURT



By: _____

Deputy Clerk

500 Gold Avenue SW, 10th Floor

PO Box 546

Albuquerque, NM 87103-0546

Telephone: 505-348-2500

LINCOLN COUNTY-NM
RHONDA S BURROWS, CLERK
20170409
Book 2017 Page 4909
3 of 4
09-05-2017 09:04:47 AM

MIME-Version:1.0

From:CMECF_cmecfdataquality@nm.uscourts.gov

To:CMECF_cmecfdataquality@nm.uscourts.gov

Bcc: CMECF_TOrders@nm.uscourts.gov, david_thoma@nm.uscourts.gov, filings@jdbenhies.com,
Do not notice for BK case:

Message-Id: <5143133@nm.uscourts.gov>

Subject:15-01047-t Doc. 118 Tammy Sprague as PR for the estate of Fred Dale Va v. William

Content-Type: text/html

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U.S. BANKRUPTCY COURT

District of New Mexico

Notice of Electronic Filing

The following transaction was received from pts entered on 7/28/2017 at 3:37 PM MDT and filed on 7/28/2017

Case Name: Tammy Sprague as PR for the estate of Fred Dale Va v. Williams et al

Case Number: 15-01047-t

Document Number: 118

Docket Text:

Issued Transcript of Judgment in triplicate in favor of Tammy Sprague, as personal representative for the estate of Fred Dale Van Winkle and against John Williams, Ellen B. Williams, and Bellevue Valley Land Co., Inc., in the amount of \$50,000.00, plus costs of \$0.00, for a total of \$50,000.00, plus interest at the rate of Federal Judgment Rate (RE: related document(s)[109] Judgment). (pts)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:15-1047.pdf

Electronic document Stamp:

[STAMP bkccfStamp_ID=1021991579 [Date=7/28/2017] [FileNumber=5143133-0]
][840e5fcc71ab4365d8662fa03f84e98a119830724ca827ce80090052cb2d107577c
5aac7bdb324c53dfb43ce1181d7135e4c5af4df13482fa2527oda07af58c3]]

15-01047-t Notice will be electronically mailed to:

R. Trey Arvizu, III on behalf of Plaintiff Tammy Sprague as PR for the estate of Fred Dale Van Winkle

trey@arvizulaw.com,
polly@arvizulaw.com;eva@arvizulaw.com;office@arvizulaw.com;laptop@arvizulaw.com

Jennie Behles on behalf of Defendant Belleview Valley Land Co., Inc.
filings@jdbehles.com, tammin@jdbehles.com;lawclerk3@jdbehles.com

Jennie Behles on behalf of Defendant Ellen B. Williams
filings@jdbehles.com, tammin@jdbehles.com;lawclerk3@jdbehles.com

Jennie Behles on behalf of Defendant John Williams
filings@jdbehles.com, tammin@jdbehles.com;lawclerk3@jdbehles.com

W. T. Martin Jr. on behalf of Defendant Belleview Valley Land Co., Inc.
martinlaw@zianet.com

W. T. Martin Jr. on behalf of Defendant Ellen B. Williams
martinlaw@zianet.com

W. T. Martin Jr. on behalf of Defendant John Williams
martinlaw@zianet.com

United States Trustee
ustregion20.aq.ecf@usdoj.gov

15-01047-t Notice will not be electronically mailed to:

Kenneth Dugan on behalf of Defendant Belleview Valley Land Co., Inc.
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

Kenneth Dugan on behalf of Defendant Ellen B. Williams
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

Kenneth Dugan on behalf of Defendant John Williams
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

LINCOLN COUNTY-401			
MARION B. BURTON, CLERK			
2017041909			
Book	2817	Page	4709
4	of	4	
05-05-2017 09:04:49 AM			

CERTIFIED a true copy of page(s) 4
of the original filed in the office of the Clerk,
United States Bankruptcy Court.
[Signature]
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FRED DALE VAN WINKLE
Debtor(s).

TAMMY SPRAGUE, as PR for the estate
Of Fred Dale Van Winkle
Plaintiff(s).

v.

Adv. Pro. No. 15-01047

JOHN WILLIAMS, ELLEN B.
WILLIAMS, and BELLEVIEW
VALLEY LAND CO., INC.,
Defendant(s).

TRANSCRIPT OF JUDGMENT

Nature of Action: Willful
Violation of the Automatic Stay

Judgment Creditor(s)
TAMMY SPRAGUE

Judgment Debtor(s)
JOHN WILLIAMS, ELLEN B.
WILLIAMS, and BELLEVIEW
VALLEY LAND CO., INC.

Judgment Amount:

Damages	<u>\$ 50,000.00</u>
Costs	<u>\$</u>
Total	<u>\$ 50,000.00</u>
Rate of Interest	<u>Federal Judgment Rate</u>

Date of Judgment: June 23, 2017

Date of Docketing Judgment: June 23, 2017

Issuance and Return of Executions, If Any: None

NM LF 5003-5

Attorney for Creditor: R. "Trey" Arvizu
PO Box 1479
Las Cruces, NM 88004
(575) 527-8600
Fax: (575) 527-1199

Does the docket indicate the judgment has been satisfied in full or in part? NO.
If yes, indicate the amount paid: _____.

I, Patty Stephens, a deputy clerk of the United States Bankruptcy Court for the District of New Mexico, do hereby certify that the foregoing is a true transcript of the docket of a judgment of this court, now of record in the Office of the Clerk.

Witness my hand and the seal of this court, this 28th day of July 2017.

CLERK OF COURT



By: Patty Stephens
Deputy Clerk
560 Gold Avenue SW, 10th Floor
PO Box 546
Albuquerque, NM 87103-0546
Telephone: 505-348-2500

REC DATE: 8/1/17 REC TIME: 11:37:45 AM INSTR: 201707043 CLK 24
OTERO COUNTY, ROBYN HOLMES COUNTY CLERK, PAGE 3 OF 4

MIME-Version: 1.0

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To: CMCECF_cmecfdataquality@nmb.uscourts.gov

Bcc: CMCECF_TOrders@nmb.uscourts.gov, david_thuma@nmb.uscourts.gov, filings@jdbelies.com,

Do not notice for BK case:

Message-Id: <5143133@nmb.uscourts.gov>

Subject: 15-01047-t Doc. 118 Tammy Sprague as PR for the estate of Fred Dale Va v. William

Content-Type: text/html

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U.S. BANKRUPTCY COURT

District of New Mexico

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Case Number: 15-01047-t

Document Number: 118

Docket Text:

Issued Transcript of Judgment in triplicate in favor of Tammy Sprague, as personal representative for the estate of Fred Dale Van Winkle and against John Williams, Ellen B. Williams, and Belleview Valley Land Co., Inc., in the amount of \$50,000.00, plus costs of \$0.00, for a total of \$50,000.00, plus interest at the rate of Federal Judgment Rate (RE: related document(s)[109] Judgment). (pts)

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Electronic document Stamp:

[STAMP bkectStamp_ID=1021991579 [Date=7/28/2017] [FileNumber=5143133-0]
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5aac7bdb324c53dfb43ce1181d7135e4c5af4df13482fa2527oda07af58c3]]

15-01047-t Notice will be electronically mailed to:

R Trey Arvizu, III on behalf of Plaintiff Tammy Sprague as PR for the estate of Fred Dale Van Winkle

trey@arvizulaw.com,
polly@arvizulaw.com;eva@arvizulaw.com;office@arvizulaw.com;laptop@arvizulaw.com

Jennie Behles on behalf of Defendant Belleview Valley Land Co., Inc.
filings@jdbehles.com, tammin@jdbehles.com;lawclerk3@jdbehles.com

Jennie Behles on behalf of Defendant Ellen B. Williams
filings@jdbehles.com, tammin@jdbehles.com;lawclerk3@jdbehles.com

Jennie Behles on behalf of Defendant John Williams
filings@jdbehles.com, tammin@jdbehles.com;lawclerk3@jdbehles.com

W. T. Martin Jr. on behalf of Defendant Belleview Valley Land Co., Inc.
martinlaw@zianet.com

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martinlaw@zianet.com

W. T. Martin Jr. on behalf of Defendant John Williams
martinlaw@zianet.com

United States Trustee
ustpregion20.aq.ecf@usdoj.gov

15-01047-t Notice will not be electronically mailed to:

Kenneth Dugan on behalf of Defendant Belleview Valley Land Co., Inc.
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

Kenneth Dugan on behalf of Defendant Ellen B. Williams
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

Kenneth Dugan on behalf of Defendant John Williams
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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of the original filed in the office of the
United States Bankruptcy Court
S. J. Searl
Deputy Clerk



In re:

FRED DALE VAN WINKLE
Debtor(s).

Case No. 13-11743-t

TAMMY SPRAGUE, as PR for the estate
Of Fred Dale Van Winkle
Plaintiff(s),

v.

Adv. Pro. No. 15-01047

JOHN WILLIAMS, ELLEN B.
WILLIAMS, and BELLEVIEW
VALLEY LAND CO., INC.,
Defendant(s).

TRANSCRIPT OF JUDGMENT

Nature of Action: Willful
Violation of the Automatic Stay

Judgment Creditor(s)
TAMMY SPRAGUE

Judgment Debtor(s)
JOHN WILLIAMS, ELLEN B.
WILLIAMS, and BELLEVIEW
VALLEY LAND CO., INC.

Judgment Amount:

Damages	\$ 50,000.00
Costs	\$
Total	\$ 50,000.00
Rate of Interest	Federal Judgment Rate

Date of Judgment: June 23, 2017

Date of Docketing Judgment: June 23, 2017

Issuance and Return of Executions, If Any: None

NM LF 5003-S

20172857 09/05/2017 11:22:54 AM
Page: 1 of 4 Fee: 25.00 TJ
Dakun D Searl, Roosevelt Co. Clk., Roosevelt, NM



Attorney for Creditor: R. "Trey" Arviza
PO Box 1479
Las Cruces, NM 88004
(575) 527-8600
Fax: (575) 527-1199

Does the docket indicate the judgment has been satisfied in full or in part? NO.
If yes, indicate the amount paid: _____.

I, Patty Stephens, a deputy clerk of the United States Bankruptcy Court for the District of New Mexico, do hereby certify that the foregoing is a true transcript of the docket of a judgment of this court, now of record in the Office of the Clerk.

Witness my hand and the seal of this court, this 28th day of July 2017.

CLERK OF COURT



By: _____

Deputy Clerk

500 Gold Avenue SW, 10th Floor

PO Box 546

Albuquerque, NM 87103-0546

Telephone: 505-348-2500

20172057 09/05/2017 11:22:54 AM
Page: 2 of 4 Fee: 25.00 TJ
Debra D Searl, Roosevelt Co. Clk., Roosevelt, NM



MIME-Version:1.0
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 To:CMECF_cmecfdataquality@nmb.uscourts.gov
 Bcc: CMECF_TOrders@nmb.uscourts.gov, david_thuma@nmb.uscourts.gov, filings@jdbenhies.com,
 Do not notice for BK case:

Message-Id:<5143133@nmb.uscourts.gov>
 Subject:15-01047-t Doc. 118 Tammy Sprague as PR for the estate of Fred Dale Va v. William

Content-Type: text/html

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U.S. BANKRUPTCY COURT

District of New Mexico

Notice of Electronic Filing

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Case Name: Tammy Sprague as PR for the estate of Fred Dale Va v. Williams et al
 Case Number: 15-01047-t
 Document Number: 118

Docket Text:

Issued Transcript of Judgment in triplicate in favor of Tammy Sprague, as personal representative for the estate of Fred Dale Van Winkle and against John Williams, Ellen B. Williams, and Belleview Valley Land Co., Inc., in the amount of \$50,000.00, plus costs of \$0.00, for a total of \$50,000.00, plus interest at the rate of Federal Judgment Rate (RE: related document(s)[109] Judgment). (pts)

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Document description:Main Document

Original filename:15-1047.pdf

Electronic document Stamp:

[STAMP bkccfStamp_ID=1021991579 [Date=7/28/2017] [FileNumber=5143133-0
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 5aac7bdb324c53dfb43ce1181d7135e4c5af4df13482fa2527cda07af58c3]]

20170807 09/05/2017 11:22:54 AM

Page: 3 of 4 Fee: 25.00 TJ

Dillon D Seal, Roosevelt Co. Clerk, Roosevelt, NM



15-01047-t Notice will be electronically mailed to:

R Trey Arvizu, III on behalf of Plaintiff Tammy Sprague as PR for the estate of Fred Dale Van Winkle

trey@arvizulaw.com,
polly@arvizulaw.com;eva@arvizulaw.com;office@arvizulaw.com;laptop@arvizulaw.com

Jennie Behles on behalf of Defendant Belleview Valley Land Co., Inc.
filings@jdbehles.com, tammin@jdbehles.com,lawclerk3@jdbehles.com

Jennie Behles on behalf of Defendant Ellen B. Williams
filings@jdbehles.com, tammin@jdbehles.com,lawclerk3@jdbehles.com

Jennie Behles on behalf of Defendant John Williams
filings@jdbehles.com, tammin@jdbehles.com,lawclerk3@jdbehles.com

W. T. Martin Jr. on behalf of Defendant Belleview Valley Land Co., Inc.
martinlaw@zianet.com

W. T. Martin Jr. on behalf of Defendant Ellen B. Williams
martinlaw@zianet.com

W. T. Martin Jr. on behalf of Defendant John Williams
martinlaw@zianet.com

United States Trustee
ustregion20.aq.ecf@usdoj.gov

15-01047-t Notice will not be electronically mailed to:

Kenneth Dugan on behalf of Defendant Belleview Valley Land Co., Inc.
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

Kenneth Dugan on behalf of Defendant Ellen B. Williams
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168

Kenneth Dugan on behalf of Defendant John Williams
Martin, Dugan and Martin Law Firm
509 W. Pierce St
PO Box 2168
Carlsbad, NM 88221-2168



20172657 09/05/2017 11:22:54 AM

Page: 4 of 4

Fee: 25.00

TJ

Debra D. Searl, Roosevelt Co. Clk., Roosevelt, NM

**UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW MEXICO**

In re:

Fred Dale Van Winkle,

Debtor,

and

Brian Van Winkle, not in his personal capacity
but solely as co-personal representative
of the estate of Fred Van Winkle, and **Tammy
Sprague**, not in her personal capacity but solely as
co-personal representative of the estate of Fred Van
Winkle,

Plaintiffs,

vs.

Belleview Valley Land Co., a New Mexico
corporation, **John H. Williams**, and **Ellen B.
Williams**,

Defendants.

Case No. 13-11743-47

Adv. No. 20-01022

**DEFENDANTS' REQUEST FOR ADMISSIONS TO
BRIAN VAN WINKLE AND TAMMY SPRAGUE**

EXHIBIT "27"

COME NOW Defendants, **Bellevue Valley Land Co.**, a New Mexico corporation (*hereinafter referred to as "Bellevue"*), **John H. Williams**, and **Ellen B. Williams** (*the Williams are hereinafter jointly referred in the singular to as "Williams"*) (*Williams and Bellevue are jointly referred to as "Defendants"*) by and through their attorney, W. T. Martin, Jr., of Martin, Dugan & Martin, and pursuant to **FRBP 7036** and **FRCP 36** hereby request that Plaintiffs, Brian Van Winkle and Tammy Sprague respond to the following Request for Admissions within 30 days of service of these *Request for Admissions*.

DEFINITIONS

1. The term "you" or "your" or "Brian Van Winkle or Tammy Sprague," including in their personal capacity or solely as Personal Representative of the Estate of Fred Van Winkle.
2. "Person" shall refer to a natural person, partnership, corporation, incorporated association, or other legal entity.
3. The term "document" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notations made on such copies or otherwise including, without limitation, correspondence, e-mail, text messages, memoranda, notes, diaries, letters, telegrams, minutes, summaries, pamphlets, books, inter-office and intra-office communications, notations of any sort of conversations, telephone calls, meetings, or other communications, bulletins, printed matter, computer print-outs or punch cards, teletypes, telefaxes, invoices, worksheets, and all drafts, alterations, modifications, changes and amendments of any of the foregoing, graphic or oral records or representations of any kind, including without limitation, photographs, blueprints, diagrams, charts, graphs, microfilms, videotapes, recordings, motion pictures and electronic, mechanical or electrical records or representations of any kind, including without limitation, tapes, cassettes, discs and recordings.
4. Whenever used herein, the singular includes the plural and vice versa; the words "and" and "or" shall be both conjunctive and disjunctive; the word "all" means "any and all"; the word "any" means "any and all"; the word "including" means "including without limitation."
5. "Communications" means every manner of transmitting and receiving facts, information, opinions and thoughts, whether orally, by documents, writing or copy thereof, or otherwise.

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit that on May 21, 2013 Fred Van Winkle filed a chapter 7 Petition in the Bankruptcy Court for the District of New Mexico.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 2: Admit that on August 26, 2013, prior to his death, Fred Van Winkle obtained his bankruptcy discharge.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 3: Admit that on December 4, 2013, the Bankruptcy Court entered its *Order Lifting Stay as to Debtor's Otero County Property*.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 4: Admit that on March 20, 2015, the Debtor filed a *Motion to Compel Trustee's Abandonment of Assets Pursuant to 11 U.S.C. §554*.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 4A: Admit that Paragraph 4 of the *Motion to Compel Trustee's Abandonment of Assets Pursuant to 11 U.S.C. §554* states that: "The Debtor recently amended schedule B to include a right of redemption which arose post-petition on property foreclosed in Otero County. It is arguable the right of redemption is not property of the estate; ..."

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 4B: Admit that by filing the *Motion to Compel Trustee's Abandonment of Assets Pursuant to 11 U.S.C. §554* Debtor sought an Order abandoning the right of redemption to the property in Otero County.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 5: Admit that on April 15, 2015, the Bankruptcy Court entered its *Order Abandoning Assets Pursuant to 11 U.S.C. §554*, which included the abandoning of the right of redemption on the Otero County property.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 6: Admit that on April 20, 2015, Tammy Sprague, as Personal Representative of the Estate of Fred Van Winkle filed a Petition for Redemption of the Otero County property in state court in Otero County Cause Number D-1215-CV-2010-01054.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 7: Admit that on April 21, 2015 the Otero County District Court entered its Order "accepting" the deposit of \$73,200.94 into the Court Registry.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 7A: Admit that upon the Otero County District Court accepting the funds, title to those funds passed to the Court.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 8: Admit that on May 14, 2015, Belleview Valley Land Co., John Williams and Ellen B. Williams filed their *Response to the Petition for Redemption* in the Otero County District Court case, Otero County Cause Number D-1215-CV-2010-01054.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 9: Admit that on May 14, 2015, Belleview Valley Land Co., John Williams and Ellen B. Williams filed their *Complaint to Foreclose Judgment Lien and/or Deficiency Judgment Lien*, in Otero County Cause Number D-1215-CV-2010-01054.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 10: Admit that on May 14, 2015, Belleview Valley Land Co., John Williams and Ellen B. Williams filed their *Motion for Summary Judgment to Foreclose Judgment Lien and Supporting Brief*, Otero County Cause Number D-1215-CV-2010-01054.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 11: Admit on June 24, 2015, Tammy Sprague, as Personal Representative, filed an adversary proceeding in the Bankruptcy Court for the District of New Mexico, which was assigned Adversary Number 15-01047.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 12: Admit before the date of the filing of Adversary Number 15-01047, the following was true:

A. Tammy Sprague, as Personal Representative, had obtained the abandonment of the right of redemption.

RESPONSE: _____ Admitted _____ Denied

B. Tammy Sprague, as Personal Representative, had chosen to file the Petition in the Otero County District Court seeking redemption of the Otero County property.

RESPONSE: _____ Admitted _____ Denied

C. Tammy Sprague, as Personal Representative, had chosen to deposit redemption funds with the Otero County District Court and sought the Court's acceptance of the deposited redemption funds.

RESPONSE: _____ Admitted _____ Denied

D. Belleview Valley Land Co., John Williams and Ellen B. Williams responded to the redemption petition, filed their *Complaint to Foreclose Judgment Lien and/or Deficiency Judgment Lien* as well as their *Motion for Summary Judgment to Foreclose Judgment Lien and Supporting Brief*.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 13: Admit that the BAP, in *in re Van Winkle*, 583 B.R. 759 (2018), held that Belleview Valley Land Co., John Williams and Ellen B. Williams did not violate 11 U.S.C. §524(a)(2) "because, under New Mexico law, a deficiency judgment may become a post-redemption lien on the real property once properly transcribed."

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 14: Admit that the issue in this adversary arose after purchasers paid for the foreclosed real property at the 2014 foreclosure sale and the subsequent redemption of the foreclosed real property, both of which were post-petition.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 15: Admit that in her *Motion to Substitute Tammy Sprague, Brian Van Winkle and Haley Van Winkle as Petitioners* filed on September 28, 2018, Otero County Cause Number CV-1215-CV-2010-01054, Tammy Sprague, as Personal Representative, stated that the redemption funds were provided by Tammy Sprague, Brian Van Winkle and Haley Van Winkle.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 16: Admit that in Tammy Sprague's deposition in the adversary proceeding, Adversary Number 15-01047, she testified the source of the redemption funds were from a loan by a third party.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 17: Admit that in Tammy Sprague's deposition in the adversary proceeding, Adversary Number 15-01047, Tammy Sprague's refused to disclose who loaned the money.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 18: Admit in Tammy Sprague's deposition in the adversary proceeding, Adversary Number 15-01047, she testified she signed a promissory note to a single person that gave her the loan.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 18A: Admit that the informal promissory note was actually an informal agreement and not a promissory note.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 19: Admit that in Tammy Sprague's deposition in the adversary, Adversary Number 15-01047, she testified that the loan came from a holding company.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 20: Admit that in Tammy Sprague's deposition in the adversary, Adversary Number 15-01047, she testified that the \$73,200.94 deposited into the court registry came from the \$147,000.00 loan.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 21: Admit that in Tammy Sprague's deposition in the adversary proceeding, Adversary Number 15-01047, she testified that she received the loan check on approximately August 22, 2014 but did not attempt to exercise the redemption until April 2015.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 22: Admit that:

A. The loan was after Fred Van Winkle filed his Chapter 7 Petition and was therefore post-petition.

RESPONSE: _____ Admitted _____ Denied

B. The loan was after Fred Van Winkle received his Chapter 7 discharge and was therefore post-discharge.

RESPONSE: _____ Admitted _____ Denied

C. The loan was after the abandonment of the Otero County property.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 23: Admit or deny that Brian Van Winkle filed an Intervention in Bankruptcy case # 13-11743 on June 18, 2019.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 24: Admit that Brian Van Winkle in his Intervention states that he met with lenders in California to secure a loan for the redemption and was individually the source for the funds.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 25: Admit that Brian Van Winkle in his Intervention states he used his home for collateral for the loan.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 26: Admit that the filing of the Redemption Petition in the Otero County District was voluntary.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 27: Admit that the Estate's actions were voluntary and the Estate was not forced to redeem the real property.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 28: Admit that the Estate's filed its *Notice of Appeal* from the Otero County District Court's Orders, Otero County Cause Number D-1215-CV-2010-01054, in the New Mexico Court of Appeals on July 29, 2019 and that it filed its *Docketing Statement* in the Court of Appeals on September 11, 2019.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 28A: Admit that the Estate's appeal to New Mexico Court of Appeals includes the appeal from District Court's *Order on Plaintiffs' Motion for Summary Judgment to Foreclose Judgment Lien and Supporting Brief* entered July 19, 2019 and *Order on Plaintiffs' Amended Motion to Distribute Redemption Sums and Enter Final Judgment*, entered August 12, 2019.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 29: Admit that in Lincoln County Cause Number D-1226-CV-2015-00065, Bellevue Valley Land Co., John Williams and Ellen B. Williams filed their *Motion to File Second Amended Complaint*.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 29A: Admit that counsel for the Van Winkle Estate consented to Belleview Valley Land Co., John Williams and Ellen B. Williams filing of a revised version of their *Second Amended Complaint for Judgment for Debt and Money Due on Promissory Note, to Foreclose Real Estate Mortgage and to Foreclose Judgment Lien*.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 29B: Admit that on April 29, 2019, the Lincoln County District Court entered an Order that allowed Belleview Valley Land Co., John Williams and Ellen B. Williams to file a revised version of their *Second Amended Complaint for Judgment for Debt and Money Due on Promissory Note, to Foreclose Real Estate Mortgage and to Foreclose Judgment Lien*.

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 29C: Admit that the April 29, 2019, Order specifically found that "Defendant's counsel consented to Plaintiff's filing of the revised Second Amended Complaint."

RESPONSE: _____ Admitted _____ Denied

REQUEST FOR ADMISSION NO. 29D: Admit that the filed *Second Amended Complaint for Judgment for Debt and Money Due on Promissory Note, to Foreclose Real Estate Mortgage and to Foreclose Judgment Lien* contains the following language:

CAVEAT TO ENTIRE PLEADING: Before Plaintiffs provide their requested relief in the prayer, Plaintiffs hereby condition and caveat every allegation in this pleading, including the prayer. The bankruptcy court through various orders has placed certain limitations on Plaintiffs regarding the available relief herein. For instance, any recovery is limited to merely in rem. Also, the bankruptcy court has placed monetary limits on the judicial lien. This Complaint and every allegation herein should be construed expressly and only as permitted under the applicable bankruptcy orders and laws. Plaintiffs merely seek to recover what they are due and owed under the applicable law. Any allegation herein that could be construed as seeking recovery in violation of those bankruptcy court orders, rules or any laws is not

intended and should be stricken and/or ignored. Plaintiffs seek only *in rem* recovery and as limited under applicable orders, rules and laws.

RESPONSE: ☐ Admitted ☐ Denied

REQUEST FOR ADMISSION NO. 29E: Admit that other than the Estate filing an Answer to the *Second Amended Complaint for Judgment for Debt and Money Due on Promissory Note, to Foreclose Real Estate Mortgage and to Foreclose Judgment Lien*, there has been no further action in the Lincoln County Court and the matter is pending.

RESPONSE: ☐ Admitted ☐ Denied

Martin, Dugan & Martin



By _____
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Attorney for Defendants

CERTIFICATE OF SERVICE

On June 8, 2020, opposing counsel was served by electronic filing.

Martin, Dugan & Martin

A handwritten signature in black ink, appearing to read "W. T. Martin, Jr.", is positioned above the signature line.

By _____

W. T. Martin, Jr.

**UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF NEW MEXICO**

In re:

Fred Dale Van Winkle,

Debtor,

and

Brian Van Winkle, not in his personal capacity
but solely as co-personal representative
of the estate of Fred Van Winkle, and **Tammy
Sprague**, not in her personal capacity but solely as
co-personal representative of the estate of Fred Van
Winkle,

Plaintiffs,

vs.

Belleview Valley Land Co., a New Mexico
corporation, **John H. Williams**, and **Ellen B.
Williams**,

Defendants.

Case No. 13-11743-t7

Adv. No. 20-01022

**DEFENDANTS' CERTIFICATE OF SERVICE AS TO ITS
REQUEST FOR ADMISSIONS TO BRIAN VAN WINKLE
AND TAMMY SPRAGUE**

EXHIBIT "28"

COME NOW Belleview Valley Land Co., a New Mexico corporation (*hereinafter referred to as "Belleview"*), John H. Williams, and Ellen B. Williams (*the Williams are hereinafter jointly referred in the singular to as "Williams"*)(*Williams and Belleview are jointly referred to as "Defendants"*) by and through their attorney, W. T. Martin, Jr., of Martin, Dugan & Martin, and certifies that it has served Defendants' Request for Admissions via e-mail on June 8, 2020 on Plaintiffs' attorney of record, Joel Gaffney at joel@gaffneylaw.com.

Martin, Dugan & Martin



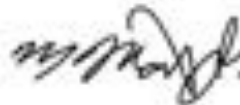
By _____

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Attorney for Defendants

CERTIFICATE OF SERVICE

On June 8, 2020, opposing counsel was served by electronic filing.

Martin, Dugan & Martin



By _____

W. T. Martin, Jr.